

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 Olin Corporation; and Pioneer Americas LLC)
 4 d/b/a Olin Chlor Alkali Products,)

5 Plaintiffs,)

6 vs.)

7 Continental Casualty Company, *et al.*,)

8 Defendants.)

9 Continental Casualty Company,)

10 Plaintiff,)

11 vs.)

12 Olin Corporation,)

13 Defendant.)

Case No.: 2:10-cv-00623-GMN-NJK
 2:10-cv-01298-GMN-NJK

ORDER

16 Pending before the Court is the Motion to Alter or Amend Judgment or, Alternatively,
 17 for a New Trial (ECF No. 307), filed by Continental Casualty Company (“Continental”), to
 18 which Olin Corporation and Pioneer Americas, LLC d/b/a Olin Chlor Alkali Products
 19 (collectively, “Olin”) filed a Response (ECF No. 308) and Continental filed a Reply (ECF No.
 20 309). Also before the Court is Continental’s Motion to Expedite (ECF No. 310), to which no
 21 opposition was filed.

22 **I. BACKGROUND**

23 On February 8, 2013, after a jury trial, the jury returned a verdict in favor of Olin, and
 24 the Court entered final judgment accordingly on March 11, 2013, incorporating the terms of the
 25 parties’ confidential partial settlement agreement. (Order, March 11, 2013, ECF No. 306.)

1 Continental filed the instant Motion to Alter or Amend Judgment or, Alternatively, for a
2 New Trial (ECF No. 307) on April 8, 2013, and filed the instant Motion to Expedite (ECF No.
3 310) on November 4, 2013. Continental brings its motion pursuant to Rule 59 of the Federal
4 Rules of Civil Procedure, and requests an Order altering or amending the judgment, or, in the
5 alternative, for a new trial.

6 **II. LEGAL STANDARD**

7 Rule 59 of the Federal Rules of Civil Procedure provides for motions for a new trial, as
8 well as motions to alter or amend a judgment in certain cases where summary judgment has
9 been granted. Fed. R. Civ. P. 59; *see School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1262
10 (9th Cir. 1993), *cert. denied*, 512 U.S. 1236 (1994).

11 Upon a Rule 59(a) motion, and after a jury trial, the Court may grant a new trial on all or
12 some of the issues, and to any party, “for any reason for which a new trial has heretofore been
13 granted in an action at law in federal court.” Fed. R. Civ. P. 59(a)(1)(A). “A Rule 59 motion
14 for a new trial is confided to the discretion of the district court.” *Kode v. Carlson*, 596 F.3d 608,
15 611 (9th Cir. 2010).

16 The Ninth Circuit has listed grounds for amending or altering a judgment pursuant to
17 Rule 59(e): (1) to correct manifest errors of law or fact upon which the judgment rests; (2) to
18 present newly discovered or previously unavailable evidence; (3) to prevent manifest injustice;
19 and (4) if the amendment is justified by an intervening change in controlling law. *Allstate Ins.*
20 *Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). Although a district court “enjoys
21 considerable discretion” in considering such a motion, “amending a judgment after its entry
22 remains an extraordinary remedy which should be used sparingly.” *Id.* (internal quotation
23 marks omitted).

24 **III. DISCUSSION**

25 Continental brings its motion requesting amendment of the judgment as follows:

- 1 1. apply New York law, and not Nevada law, to the action;
- 2 2. find that the term “corrosion” is not ambiguous;
- 3 3. not apply the ambiguity against Continental;
- 4 4. determine that the “efficient proximate cause” doctrine does not apply to boiler &
- 5 machinery coverage cases;
- 6 5. allow evidence of Olin’s revised shutdown procedures;
- 7 6. exclude Mr. Romine’s rebuttal testimony regarding sodium bisulfite.

8 (Mot. Alter, Amend J., ECF No. 307.) Alternatively, Continental asks the Court to grant a new
9 trial on these issues. (*Id.*)

10 Having reviewed the motion, as well as Olin’s Response (ECF No. 308) with attached
11 exhibits, and Continental’s Reply (ECF No. 309), the Court cannot find that altering or
12 amending the judgment, or granting a new trial, is merited. Continental’s motion primarily
13 relies on the argument that the Court must correct manifest errors of law and fact upon which
14 the judgment rests, and to prevent manifest injustice. The Court has considered Continental’s
15 arguments, and finds no basis to reverse its previous rulings at trial or its previous holdings, and
16 finds no newly discovered or previously unavailable evidence or any intervening change in
17 controlling law that would justify altering or amending the judgment, or granting a new trial.

18 **IV. CONCLUSION**

19 **IT IS HEREBY ORDERED** that the Motion to Alter or Amend Judgment or,
20 Alternatively, for a New Trial (ECF No. 307) is **DENIED**.

21 **IT IS FURTHER ORDERED** that the Motion to Expedite (ECF No. 310) is
22 **GRANTED**.

23 **DATED** this 23rd day of December, 2013.

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Gloria M. Navarro
United States District Judge